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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 502

JOHN N. SHANNAHAN AND CLAUDE J. JACKSON, AS TRUSTEES OF THE PROPERTY OF CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA.

FILED OCTOBER 14, 1937.

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[fol. 1] [Caption omitted]

[fol. 2] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

In Equity. No. 622

JOHN N. SHANNAHAN and CLAUDE J. JACKSON, as Trustees of the Property of Chicago South Shore and South Bend Railroad, and Chicago South Shore and South Bend Railroad, Petitioners,

vs.

UNITED STATES OF AMERICA, Defendant

PETITION—Filed June 22, 1936

To the Honorable the Judges of the District Court of the United States for the Northern District of Indiana, South Bend Division:

John N. Shannahan, a citizen of the state of Indiana, residing in Marion county, in said state, and Claude J. Jackson, a citizen of the state of Indiana, residing in St. Joseph county, in said state, as Trustees of the property of Chicago South Shore and South Bend Railroad, and Chicago South Shore and South Bend Railroad, a corporation duly organized and existing under the laws of the state of Indiana, and having its principal place of business and office in the city of Michigan City, in LaPorte county, in said state of Indiana, and a citizen of said LaPorte county, Indiana, petitioners, bring this suit and file their petition against the United States of America, defendant, and allege:

1. The jurisdiction of this Court is invoked under the Urgent Deficiencies Act of October 22, 1913, Chapter 32, 38 Statutes at Large 208, 219 (28 U. S. C. A. Sec. 41, Sub. 28), in that this is a suit brought to enjoin, set aside, annul and suspend the hereinafter described order of the Interstate Commerce Commission finding and determining that petitioners' line of railroad, commonly known and referred to as the Chicago South Shore and South Bend Railroad,

[fol. 3] is not a street, interurban or suburban electric railway within the meaning of the exemption proviso in the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934, and is, therefore, subject to the provisions of that Act.

2. On May 27, 1936, this court, by its order duly entered in the reorganization proceedings No. 972 hereinafter mentioned, authorized the trustees, petitioners herein, to commence and prosecute this proceeding.

3. Chicago South Shore and South Bend Railroad (herein sometimes called "South Shore") was incorporated June 23, 1925, with charter power to construct, acquire, purchase, own, maintain and operate street railroad, interurban street railroad and suburban street railroad lines and systems. The South Shore purchased and acquired title by deed of conveyance on July 13, 1925, to an electric interurban railroad operated between Chicago, Illinois, and South Bend, Indiana, approximately 90 miles in length. It operated said electric interurban railroad from July 13, 1925, until November 1, 1935.

4. The South Shore filed its petition No. 972 in the United States District Court for the Northern District of Indiana, South Bend Division, on September 30, 1933, to effect a plan of reorganization under Section 77 of the Acts of Congress relating to Bankruptcy and the Court in said proceedings entered on said date an order approving the petition as properly filed and authorizing and directing the Debtor, the South Shore, to run and operate the railroad, which it did under the directions of the Court until November 1, 1935. On September 30, 1935, the Court appointed the petitioners, John N. Shannahan and Claude J. Jackson, trustees of the property of the Chicago South Shore and South Bend Railroad, and the Interstate Commerce Commission, by its order entered October 30, 1935, Finance Docket No. 10165, ratified said appointment. On November 1, 1935, said Trustees, John N. Shannahan and Claude J. Jackson, qualified and filed their bond, which was duly approved by said Court. Since November 1, 1935, said Trustees have operated the said South Shore as such Trustees [fol. 4] and are now operating the same as such, and by virtue of the said proceedings are the legal owners, as such Trustees, of the property of said South Shore.

5. The Interstate Commerce Commission in the said proceedings for the reorganization of said railroad, by an order entered by said Commission in said proceedings, Finance Docket No. 10165 of said Commission, on April 16, 1936, approved a plan of reorganization of said railroad, which provides for the retention of all of the Debtor's property by the Debtor.

6. On August 9, 1934, the National Mediation Board, pursuant to the proviso in the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934 (45 U. S. C. A., Sec. 151), requested the Interstate Commerce Commission to determine whether the Chicago South Shore and South Bend Railroad, a railroad operated by electric power, falls within the terms of the proviso in the first paragraph of said section, which proviso exempts from the provisions of the Act, any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam railroad system of transportation. That the fact is, that the line of said South Shore never has been operating and is not now operating as a part of a general steam railroad system of transportation.

7. On May 17, 1935, the Interstate Commerce Commission, pursuant to said request of the National Mediation Board, gave notice to the South Shore that the matter of determining the status of the South Shore under the proviso of the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934, had been assigned for hearing at Hotel Morrison, Chicago, Illinois, June 25, 1935, at nine o'clock a. m., Standard Time. At said time and place the South Shore appeared and offered and introduced evidence, both oral and documentary, in support of its claim that it was an interurban railway and exempt from the operation of the Railway Labor Act, as amended June 21, 1934, by virtue of the said proviso exempting street, interurban and suburban electric railways from the oper-[fol. 5] ation of said Act. The South Shore filed its brief with the Interstate Commerce Commission in said matter on August 9, 1935, and argued the matter orally before said Commission on November 19, 1935. The petitioners, John N. Shannahan and Claude J. Jackson, as Trustees of the property of the Chicago South Shore and South Bend Railroad, Debtor, on December 30, 1935, filed their written entry

of appearance in the proceedings pending before the Commission to determine the status of said railroad under said proviso of the first paragraph of Section 1 of the Railway Labor Act.

8. The proceedings before said Interstate Commerce Commission resulted in the said Commission, on February 14, 1936, filing its report, in which it ordered, found and determined that the Chicago South Shore and South Bend Railroad is not a street, interurban or suburban electric railway within the meaning of the exemption proviso of the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934, and that the South Shore is, therefore, subject to the provisions of said Act. That the order of said Commission does not relate to transportation, or to a matter complained of before said Commission.

9. The petitioners on April 13, 1936, filed their petition for a rehearing and the Commission on May 11, 1936, upon consideration of the petition for rehearing, entered an order in which it denied said petition.

10. The Interstate Commerce Commission, in making and issuing said order, finding and determination, erred as a matter of law in the following particulars, to wit:

(a) Said order, finding and determination is contrary to the indisputable character of the evidence, and

(b) The facts found by said Commission do not, as a matter of law, support the order, finding and determination of the Commission, and

(c) Said order, finding and determination is unsupported by the evidence, is without supporting evidence and is arbitrary, and

[fol. 6] (d) The line of the Chicago South Shore and South Bend Railroad is an interurban electric railway within the exemption proviso of the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934, and is not operated as a part of a general steam railroad system of transportation.

11. Notwithstanding the matters and things hereinbefore alleged, the petitioners are threatened with the enforcement of the order, finding and determination complained of above,

and said order, finding and determination will be enforced against petitioners unless it is set aside, annulled and suspended and the enforcement thereof enjoined by this Court.

12. That pursuant to said order, finding and determination complained of above, said National Mediation Board is threatening to take, and has taken, jurisdiction of proceedings for the purpose of enforcing the provisions of said Railway Labor Act, as amended June 21, 1934.

13. That the order, finding and determination complained of above is void for lack of jurisdiction of the Interstate Commerce Commission.

Wherefore, petitioners pray:

(1) That the said order, finding and determination of the Interstate Commerce Commission that the line of the Chicago South Shore and South Bend Railroad is not a street, interurban or suburban electric railway within the meaning of the exemption proviso in the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934, and that it is, therefore, subject to the provisions of said Act, be set aside, annulled and suspended and that the enforcement of said order, finding and determination be enjoined;

(2) That it be ordered, decreed, found and determined that the Chicago South Shore and South Bend Railroad is an interurban electric railway and that the same is not operated as a part of a general steam railroad system of transportation and as such is not subject to the provisions of the Railway Labor Act, as amended June 21, 1934;

[fol. 7] (3) That it be ordered, decreed, found and determined that petitioners, John N. Shannahan and Claude J. Jackson, as trustees of the property of Chicago South Shore and South Bend Railroad, Debtor, are operating an interurban electric railway and that the same is not operated as a part of a general steam railroad system of transportation and as such is not subject to the provisions of the Railway Labor Act, as amended June 21, 1934;

(4) That the Interstate Commerce Commission in making and entering the aforesaid order, finding and determination that the line of the Chicago South Shore and South Bend Railroad is not a street, interurban or suburban electric railway within the exemption proviso of the first para-

graph of Section 1 of the Railway Labor Act, as amended June 21, 1934, and is, therefore, subject to the provisions of said Act, be found and decreed to have acted arbitrarily and contrary to and in excess of the powers of said Commission and without authority of law, contrary to the indisputable character of the evidence and without supporting evidence, and that the facts found do not as a matter of law support said order, finding and determination of the Commission;

(5) That the petitioners have such other, further and general relief as the nature of the case may require and the Court may deem just, equitable and proper.

May it Please Your Honors to grant unto the petitioners appropriate process against the Defendant, United States of America, requiring it to answer the petition as required by law, but not under oath, answer under oath being hereby expressly waived; that a temporary restraining order and interlocutory preliminary injunction granting the relief herein prayed, be issued upon motion of petitioners and that [fol. 8] upon final hearing the relief herein prayed for be granted, ordered and decreed; and the petitioners will ever pray.

(Signed) John N. Shannahan, Claude J. Jackson, As Trustees of the Property of Chicago South Shore and South Bend Railroad. Chicago South Shore and South Bend Railroad, (Signed) by John N. Shannahan, President.

Attest: ——— ———, Secretary.

(Signed) Aaron H. Huguenard, John C. Lawyer, Attorneys for Petitioners.

[fols. 9-10] *Duly sworn to by John N. Shannahan and Claude J. Jackson. Jurat omitted in printing.*

[fol. 11] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed July 6, 1936

First Defense

United States for its first defense to the bill of complaint filed herein against it says:

1. This Court is without jurisdiction to entertain the bill of complaint because the alleged order of the Interstate Commerce Commission complained of is not an order within the meaning of the Urgent Deficiencies Act of October 22, 1913, ch. 32, 38 Stat. 308, 219 (28 U. S. C. A. Sec. 41, subdivision E).

2. The bill of complaint contains no allegation that any officer or agency of the Federal Government has threatened to or has the authority to enforce the alleged order of the Interstate Commerce Commission complained of.

3. The Interstate Commerce Commission is without power or authority to enforce its determination.

4. The National Mediation Board is without power or authority to enforce the alleged order of the Interstate [fol. 12] Commerce Commission and has no power or duty to enforce any order it may make.

5. The facts alleged in the bill of complaint do not state a cause of action against United States and are not sufficient to entitle the complainant to the relief prayed.

Wherefore, United States moved that petitioner be denied injunctive relief, that the bill of complaint be dismissed, and prays that an order be entered accordingly.

Second Defense

United States for its second defense to the bill of complaint filed herein against it says:

1. Answering paragraph 1, United States denies that petitioner's suit is one to enjoin, set aside, annul, or suspend

in whole or in part an order of the Interstate Commerce Commission, and avers that the determination of the Interstate Commerce Commission complained of is not an order within the meaning of the Urgent Deficiencies Act above referred to.

2. Answering paragraphs 2, 3, 4 and 5, United States, for lack of information, denies the allegations contained therein.

3. Answering paragraph 6, United States admits that on August 9, 1934, the National Mediation Board, pursuant to paragraph first of Section 1 of the Railway Labor Act, as amended June 21, 1934 (45 U. S. C. A. Section 151) requested the Interstate Commerce Commission to determine whether the lines of the Chicago South Shore and South Bend Railroad came within the terms of the proviso of the first paragraph of said section. United States denies all other allegations contained in paragraph 6.

4. Answering paragraph 7, United States admits the allegations therein contained.

[fol. 13] 5. Answering paragraph 8, United States admits the allegations thereof except that it denies that the Commission by its determination made any order upon the Chicago South Shore and South Bend Railroad Company.

6. Answering paragraph 9, United States admits the allegations thereof.

7. Answering paragraph 10, United States avers that the statements therein contained are conclusions of law and argumentative, and require no answer. United States, however, denies the conclusions therein contained.

8. Answering paragraph 11, United States denies the allegations therein contained and avers that said determination of the Interstate Commerce Commission is not an order, and that said determination is not enforceable by the Interstate Commerce Commission.

9. Answering paragraph 12, United States, for lack of information, denies the allegations therein contained, and avers that the National Mediation Board, under the Railway Labor Act, is without power or authority to enforce any order it may make.

10. Answering paragraph 13, United States avers that the statements therein contained are conclusions of law and require no answer.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied, and that said bill be dismissed with costs to the com- [fols. 14-15] plainant, and that it have such other and further orders, decrees, or relief as may be just and equitable in the premises.

Leo F. Tierney, Special Assistant to the Attorney General. John Dickinson, Assistant Attorney General. James R. Fleming, United States Attorney. Alexander M. Campbell, Assistant United States Attorney.

Duly sworn to by Leo F. Tierney. Jurat omitted in printing.

[fol. 16] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed August 17, 1936

To the Honorable the Judges of Said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, sup. VI, title 28, sec. 45a), we hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

Daniel W. Knowlton, Chief Counsel. Nelson Thomas, Attorney.

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed August 17, 1936

The Interstate Commerce Commission, hereinafter called the Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of excep-

tion to the many errors and insufficiencies contained in the petition herein, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraph 1 of the petition, the Commission denies that this is a suit brought to enjoin, set aside, annul [fol. 18] or suspend an order of the Interstate Commerce Commission or any part thereof, and alleges and states that the action of the Commission and its report, hereinafter described, and in said paragraph referred to, is not an order within the meaning of the term as used in the Urgent Deficiencies Act of October 22, 1913, under which petitioners allege that they bring this suit.

II

Answering paragraphs 2 to 4, inclusive, of the petition, the Commission neither admits nor denies the truth of the allegations therein contained and prays the Court to require petitioners to make strict proof thereof.

III

Answering paragraphs 5 to 9, inclusive, of the petition, the Commission, for the purposes of this suit, admits the truth of the allegations therein contained, except that the Commission denies that paragraph 6 correctly states the effect of the proviso contained in the first paragraph of Section 1 of the Railway Labor Act, as amended, and respectfully refers the Court to the provisions of said act for information relative thereto, except that the Commission denies the allegation in said paragraph 6 of the petition to the effect that the petitioners' line is not and never has been operated as a part of a general steam railroad system of transportation, and except that the Commission denies that, as alleged in paragraph 8 of the petition, it, on or about February 14, 1936, or upon any other date, made any order against the petitioners.

[fol. 19] IV

Further answering said petition, the Commission admits and alleges that on or about May 17, 1935, pursuant to request made of it by the National Mediation Board, it insti-

tuted a proceeding entitled Railway Labor Act Docket No. 8, Chicago South Shore and South Bend Railroad, wherein it undertook to determine after a hearing whether the Chicago South Shore and South Bend Railroad falls within the terms of a certain proviso contained in the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934. In the course of the hearing in said proceeding, the Commission heard all parties interested in said proceeding and on or about February 14, 1936, issued its report, a true copy of which is hereto attached, marked Exhibit A, and made a part hereof. (Reported 214 I. C. C. 167.)

The Commission alleges that in the course of said proceeding and prior to the making and entering of the aforesaid report of February 14, 1936, the parties thereto, including the petitioners in this suit, were, and that each of them was, accorded the full hearing required by law; that in the course of the hearing aforesaid a large volume of testimoney and other evidence bearing upon the subject matter of the inquiry was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of the petitioners herein; that at said hearing and subsequently, questions relating to said matters were fully submitted to and were received by the Commission, whereupon the Commission determined said matters and made and entered its report of February 14, 1936; that said report includes the Commission's final findings of fact, its decision [fol. 20] and conclusions in the premises, and that upon the evidence aforesaid the Commission made its findings and stated its conclusions as set out in its report aforesaid.

The Commission further admits and alleges that the findings and conclusions stated in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in the proceedings aforesaid; that in making said report it considered and weighed carefully in the light of its own knowledge and experience each fact, circumstance and condition called to its attention on behalf of the parties in said proceeding; that neither said report nor any part thereof was made or issued either arbitrarily or unjustly, or contrary to law or to the relevant evidence, or without evidence to support it; that in making said report the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all of the allegations to the contrary contained in the petition.

V

Further answering said petition, and particularly paragraphs 10 to 13, inclusive, thereof, the Commission denies that its report of February 14, 1936, or any finding or determination therein contained, is unlawful or void for any reason whatsoever, and denies that its action in the premises has resulted or will result in depriving the petitioners of any legal right or in any way violates the provisions of the Constitution or of the laws of the United States, and the Commission further denies that the petition contains allegations which, if true, would warrant any relief either in law or equity.

[fol. 21] VI

Further answering said petition, the Commission alleges that this Court, specially constituted as required by the Urgent Deficiencies Act of October 22, 1913 (39 Stat. 218, U. S. C. sup. VII, tit. 28, secs. 41(28) to 48, both inclusive), is without jurisdiction to entertain the prayer of the petition herein inasmuch as it relates only to findings and conclusions of the Commission, upon which the Commission has made no order or requirement against the petitioners; that the jurisdiction of the specially-constituted three-judge court is derived from said Urgent Deficiencies Act of October 22, 1913, and from the Commerce Court Act of June 18, 1910, 36 Stat. 539, and that said acts, properly construed, do not vest the specially-constituted district courts with jurisdiction to correct or declare erroneous or to enjoin, set aside, annul or suspend a finding, conclusion or report of the Commission not followed by or made a part of an order.

Except as expressly admitted in this answer, the Commission denies the truth of each of and all the allegations contained in the petition in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report of February 14, 1936.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission, by Nelson Thomas, Attorney. Daniel W. Knowlton, Chief Counsel, Of Counsel.

[fol. 22] *Duly sworn to by Frank McManamy. Jurat omitted in printing.*

[fol. 23] EXHIBIT "A" TO ANSWER

20990.

INTERSTATE COMMERCE COMMISSION

Railway Labor Act Docket No. 8

CHICAGO SOUTH SHORE & SOUTH BEND RAILROAD

Submitted November 19, 1935. Decided February 14, 1936

Chicago South Shore & South Bend Railroad found not to be a street, interurban, or suburban electric railway within the exemption proviso in the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934, and it is therefore subject to the provisions of that act.

John C. Lawyer and Ray Garrett for carrier and trustees of its property under the bankruptcy law.

Ezra Brainerd, Jr., E. L. Oliver, J. F. Emerson, J. P. Farrell, Alex E. Gordon, Martin H. Miller, W. W. McKirchy, and Edmond K. Hogan for labor organizations.

Report of the Commission

Division 3, Commissioners McManamy, Mahaffie, and Miller

McMANAMY, Commissioner:

This proceeding was instituted at the request of the National Mediation Board to determine whether the Chicago South Shore and South Bend Railroad is exempt from the Railway Labor Act as amended June 21, 1934, under the proviso to the first paragraph of section 1 thereof, which reads as follows:

Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation

Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

A hearing has been held at which evidence was introduced on behalf of the above-named railroad, which contends that it is exempt as an interurban, and on behalf of the Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Engineers, Order of Railway Conductors, Brotherhood of Railway Firemen, and other labor organizations. Briefs were filed on behalf of the parties referred to together with the Railway Labor Executives' Association, which joined the other labor organizations in opposing the carrier's contention. The parties waived the issuance of a proposed report by the examiner, and the case was submitted upon oral argument before us. Subsequent to the [fol. 24] oral argument, an appearance was entered by the trustees of the carrier's property appointed under section 77 of the Bankruptcy Law, such trustees being represented by the same counsel as the carrier, and no further hearing or argument was requested by them. For convenience, the carrier will sometimes be referred to as the South Shore.

The Railway Labor Act as amended June 21, 1934, provides for the prompt and orderly settlement of disputes between the carriers and their employees. The first paragraph of section 1 thereof defines the term "carrier" as including among others any carrier by railroad subject to the Interstate Commerce Act, which is followed by the proviso hereinbefore quoted. There is no question that the South Shore is a carrier by railroad subject to the Interstate Commerce Act, except such sections thereof as contain exemptions somewhat similar to that here under consideration. The South Shore is operated with electric power, and none of its capital stock is owned by any steam railroad. The only issue, therefore, is whether its operations are those of an interurban as that term is used in the proviso.

In the first case arising under this proviso in the Railway Labor Act, Texas Electric Ry., 208 I. C. C. 193, division 6 said at pages 194, 195:

The amended Railway Labor Act does not indicate the purpose of exempting the class of lines referred to in the proviso to the first section. No reason is apparent for

distinguishing between steam and electric power, and the act does not purport to exempt all electric lines. There are other reasons which may have influenced Congress, but we think the fundamental reason was that the lines exempted are essentially local in character and largely disassociated from the steam-railroad systems. This belief is confirmed by reference to the Congressional hearings preceding the passage of this act and other acts containing similar exemptions, which hearings are referred to in the briefs and oral argument of both sides.

Previous to the passage of the amendment to the Railway Labor Act on June 21, 1934, this Commission had rendered numerous decisions regarding the status of particular electric lines under somewhat similar exemption provisions in certain sections of the Interstate Commerce Act and other acts which we administer. These decisions recognized the existence of a class of electric railways which are more than street, interurban, or suburban lines, and which are sometimes referred to as commercial railways operated by electric power. Perhaps the best description of what constitutes a street, interurban, or suburban railway was given in Rules for Testing Other Than Steam Power Locomotives, 122 I. C. C. 414, where the Commission said at page 424:

"It is well known that electric cars were at first confined to street service in cities and towns. Gradually the lines were extended to the suburbs. Next came the idea of extending the lines from city to city. These three steps gave rise to the terms street, suburban, and interurban electric railways. These lines were limited almost exclusively to carriage of passengers. They were built largely upon streets and public highways. The only material difference [fol. 25] between street, suburban and interurban lines was the extent of the lines. If the line extended from city to city it was termed an interurban although handling the same traffic and being operated in substantially the same manner as the street or suburban line. We think this is the usual conception of the interurban line today.

"Obviously the character of the lines may change without a change in the name of the operating company. The record here shows that the name of a carrier, whether it is called a railroad, traction system, interurban railway, or power and light company, indicates nothing as to the character of the line or the nature of the traffic handled. We must look

to the substance of the matter. A line which today extends only between two cities, and is dependent upon passenger traffic for the bulk of its revenues, might properly be termed an interurban line. In a period of years it might through natural development or consolidation become a railway comparable with our steam railroads and still retain its original name. It would no longer, however, be an interurban railway in substance and in fact. There would be a point, although not definitely defined, where the line passed beyond the true interurban."

The South Shore operates an electric railroad between Chicago, Ill., and South Bend, Ind., 89.8 miles. It generally parallels and competes with lines of the New York Central system. Approximately 6.39 miles of its line between the Indiana-Illinois State line and Kensington, Ill., is leased from the Kensington & Eastern Railroad Company, a subsidiary of the Illinois Central Railroad Company, and the South Shore has trackage rights over the Illinois Central's electrified suburban line between Kensington and Randolph Street in Chicago, 14.2 miles. Employees of the South Shore who operate over the Illinois Central's tracks are required to take the same examination that the latter carrier gives to its own employees. That portion of the line in Indiana amounting to about 69 miles was constructed between 1907 and 1909 by the Chicago, Lake Shore and South Bend Railroad Company and was acquired by the South Shore at a foreclosure sale in 1925. Both the South Shore and its predecessor were incorporated in Indiana under an act for the incorporation of street-railroad companies, but the South Shore was reorganized in 1929 under the general corporation act of the same State. Its articles of reorganization, like the original articles, authorize the operation of street, interurban, or suburban lines. The original franchises to use the streets in various cities and towns for a street and interurban railway were surrendered in 1922 for an indeterminate permit under the Public Service Commission Law of Indiana. All of the common stock and class B preferred stock of the South Shore is owned by the Midland Utilities Company, which is also the largest holder of the class A preferred stock. The South Shore's employees averaged 832 in 1928 and 463 in 1934.

The tracks are of standard gage, generally with 100-pound rails, but some weigh from 70 to 130 pounds per yard. [fol. 26] Approximately 20.26 miles of the line is double track, and the balance is single track. The line used into Chicago is elevated, as are the other railroads in the same vicinity. The maximum grade is 2.5 per cent, but the ruling grade is level, and the maximum curvature is 10°. The roadbed is generally ballasted with gravel, and compares favorably with some of the steam railroads in the same vicinity, but is not equal to those of the large trunk lines. A block-signal system is used, together with interlocking-signal devices at crossings with several other railroads. There are no cattle guards along the line. Steam locomotives could operate over this line, and were used on it for construction purposes when the overhead system was rebuilt in 1925 and 1926. Approximately 5.98 miles or 6.6 per cent of the line is on public streets, and the balance is on private right-of-way.

The South Shore operates 32 passenger trains each way daily over all or portions of its line, most of which consist of one or two coaches. The maximum number of coaches per train is ordinarily 5 or 6, although occasionally as many as 10 coaches are handled on excursion trains, and in one instance 20 coaches were handled with a locomotive. The South Shore has 62 passenger cars, of which 49 are motor cars and the balance trailers. Their seating capacity ranges from 44 to 56 passengers compared with from 76 to 98 in steam-railroad cars. This carrier also has two dining cars and four parlor cars, which are not now in use. Ten of the passenger cars have baggage compartments, and baggage and express are carried but not mail. Passenger stations and agents are maintained by the South Shore at eight points, and it uses six Illinois Central passenger stations at various places in Chicago. Stops are also made on signal at highway crossings in the country between regular stations. The local passenger fares of the South Shore are on the basis of 3.6 cents per mile, which generally applies on the steam railroads in this territory. No interline tickets are sold except in connection with the Illinois Central and the Chicago, Indianapolis & Louisville Railway, which represents less than one half of 1 per cent of the South Shore's passenger business.

This line had no freight business prior to 1916. Since then, its freight revenue has gradually increased from $4,807 in that year to a maximum of $1,596,246 in 1930. During each of the last four years preceding the hearing, 1931 to 1934, inclusive, its freight revenue exceeded its passenger revenue. The freight traffic is of a mixed character, except that no livestock is handled, because of a deed restriction covering about 6 miles of the right-of-way which also limits the use thereof to street and interurban railway purposes. Over 90 per cent of the freight handled by the South Shore is interchanged with other railroads and moves [fol. 27] in interstate commerce. The commodity handled in largest volume is coal, which is received from lines on the east and delivered to other lines on the west. The South Shore is also an intermediate carrier with respect to grain moving east. It is a party to a large number of tariffs publishing joint rates to and from points throughout the country. The South Shore maintains a traffic organization at Chicago and other points on its line, and it also has off-line solicitors at Minneapolis, Minn., Kansas City, Mo., Seattle, Wash., and in Wisconsin.

This carrier has 14 electric locomotives, with a rating of 4,000 tons each, which are used for hauling its freight trains. These generally consist of from 40 to 55 cars, although 60 to 70 cars have been handled occasionally, and one instance is referred to of an 87-car train. The South Shore has only 16 revenue-freight cars, and the bulk of its freight is therefore handled in foreign-line equipment. This is repaired when necessary in the South Shore's shops under rules of the American Railway Association, an average of about 100 cars per month being so repaired. Direct connections for the interchange of carload freight are maintained with seven trunk lines and six belt or switching lines which serve the Chicago district. The number of carloads of freight interchanged with these connections in recent years has ranged from 29,674 to 58,790 per year. Considerably higher estimates are given by the labor organizations, which apparently include empty as well as loaded cars. Practically the only freight which is not interchanged is a small amount of less-than-carload traffic. Formerly the South Shore had a large amount of less-than-carload business, but this has largely been lost to the trucks.

The South Shore was not under Federal control during the World War emergency period. It points out that, although its freight revenues have slightly exceeded its passenger revenues for several years, the passenger revenues of the class I steam railroads averaged only 10.6 per cent of their total revenues in 1933 and were only 20.8 per cent in 1920, when passenger revenues apparently reached their peak. On brief it is stated that the South Shore issued its securities without authority from this Commission under section 20a of the Interstate Commerce Act, but that was not shown by the evidence and in any event would not be controlling in this proceeding. See Fort Dodge, D. M. & S. R. Co., 211 I. C. C. 9, at page 12.

An Indiana statute referred to by the carrier authorizes interurbans to carry all classes of freight subject to the rules and regulations of the Public Service Commission. The South Shore also refers to Chicago, L. S. & S. B. Ry. Co. v. Guilfoyle, 198 Ind. 9, 152 N. E. 167, as holding that it is an interurban. However, the principal issue there was whether the South Shore could handle freight along a cer- [fol. 28] tain street in South Bend after surrender of its franchise, which prohibited the hauling of such freight. This issue was decided in favor of the South Shore, and it does not appear that there was any issue presented regarding the South Shore's status as an interurban. Moreover, that decision was rendered in 1926 when the South Shore's passenger revenue was approximately three times its freight revenue.

The South Shore relies upon a decision of the former Railroad Labor Board rendered December 11, 1920, under the labor provisions of the Transportation Act, 1920. Section 300 (1) thereof in defining the term "carrier" excepted "a street, interurban, or suburban electric railway not operating as a part of a general steam railroad system of transportation." The South Shore was one of 11 electric railways which the Labor Board found were exempt under that provision. It should be noted that in 1920 the South Shore's freight revenue was only $171,732 compared with passenger revenue of $675,226, which makes an important difference in conditions from the present. Moreover, the Labor Board's decision was rejected by the Supreme Court in Piedmont & N. Ry. Co. v. Interstate Commerce Commission, 286 U. S. 299; and by the Commission in Rules for

Testing Other Than Steam Power Locomotives, 122 I. C. C. 414; Texas Electric Ry., supra; Piedmont & N. Ry.. Co., 211 I. C. C. 4; and Fort Dodge, D. M. & S. R. Co., supra.

In Rules for Testing Other Than Steam Power Locomotives, supra, the Commission considered the status of a large number of electric railways under the Locomotive Inspection Act, which excludes "street, suburban, and interurban electric railways unless operated as a part of a general railroad system of transportation." The South Shore was among those carriers which were there found to be more than street, suburban, or interurban railways and therefore not within the exemption. The appendix to that report shows that the South Shore's freight revenues were then much less than its passenger revenues. Such changes in conditions as have since taken place therefore tend to confirm and strengthen the support for that decision.

In Texas Electric Ry., supra, division 6 said at page 202:

The Commission's views as to what constitutes an interurban were stated in Rules for Testing Other Than Steam Power Locomotives, supra. Those views should not be lightly departed from after Congress has authorized the Commission to determine the status of electric railways under a similar exemption provision in an act not otherwise administered by us. In harmony with that and similar decisions, we are of the opinion that an electric railway which is engaged in the general transportation of freight, whether the revenue therefrom is greater or less than its passenger revenue, which handles the bulk of such freight in standard equipment similar to that used by the steam railroads, which freely interchanges the same with the steam rail- [fol. 29] roads for transportation to or from points on their lines, a considerable portion thereof being handled in interstate or foreign commerce, and which participates in joint rates with the steam railroads for interstate transportation, has more of the characteristics of a commercial railroad operated by electric power than of an interurban as that term is used in the exemption provision under consideration. Of course, there are many other circumstances and conditions which may have a bearing on the question, and some electric railways are of such an unusual character that their status might depend on other things, but we believe the factors referred to are generally the most impor-

tant and should be given great weight where all of them exist together.

A petition to reopen that decision was denied by the Commission on May 13, 1935. The South Shore is clearly a commercial railroad operated by electric power, within the above rule.

In Piedmont & N. Ry. Co., supra, decided October 11 1935, we said at page 8:

Previous to the amendment to the Railway Labor Act on June 21, 1934, this Commission had passed upon the status of numerous electric railways under more or less similar exemption provisions in other acts administered by us. These decisions recognized a class of electric railways which were regarded as more than interurbans and were sometimes referred to as commercial railways operated by electric power. The distinction between them hinged largely upon the amount and character of freight business handled, an interurban being considered primarily a carrier of passengers and its freight traffic largely local. When Congress authorized this Commission to determine the status of electric railways under the Railway Labor Act, which is not otherwise administered by us, it is reasonable to suppose that it did so because of our experience in passing upon such questions under similar exemption provisions in other acts. This may also be regarded as a pretty good indication that Congress used the word "interurban" in the same sense as the Commission had interpreted that term in its decisions.

Briefly summarizing, the South Shore derives the largest portion of its revenue from freight traffic, over 90 per cent of which is interchanged with other railroads and moves in interstate commerce, including a considerable amount of through traffic handled as an intermediate carrier, and all of such traffic is generally handled in standard equipment under joint rates maintained with the steam railroads to and from points throughout the country. The South Shore was found not to be an interurban within a similar exemption provision in Rules for Testing Other Than Steam Power Locomotives, supra, and it has the characteristics of a commercial railroad operated with electric power within the rule laid down in Texas Electric Ry., supra.

We find that the line of the Chicago South Shore and South Bend Railroad is not a street, interurban, or suburban electric railway within the meaning of the exemption proviso in the first paragraph of section 1 of the Railway Labor Act, as amended June 21, 1934, and it is therefore subject to the provisions of that act.

[fols. 30-31] In United States District Court

Recital as to Hearing—May 18, 1937

Come now the parties herein, and now the evidence is begun and concluded, the arguments of counsel are heard and said cause is taken under advisement.

[fols. 32-33] [File endorsement omitted]

In United States District Court for the Northern District of Indiana, South Bend Division

Equity No. 622

John M. Shannahan and Claude J. Jackson, as Trustees of the Property of Chicago South Shore and South Bend Railroad, and Chicago South Shore and South Bend Railroad, Petitioners,

vs.

United States of America, Defendants

Before Evans, Circuit Judge, and Baltzell and Slick, District Judges

Opinion—Filed August 16, 1937

Views of the Majority of the Court, Evans and Baltzell

On February 14, 1936, the Interstate Commerce Commission filed its report in writing which contained, among other things, the following paragraph:

"We find that the line of the Chicago, South Shore and South Bend Railroad is not a street, interurban, or sub-

urban electric railway within the meaning of the exemption proviso in the first paragraph of section 1 of the Railway Labor Act, as amended June 21, 1934, and it is therefore subject to the provisions of that act."

The report appears in 214 I. C. C. 167-173.

Preceding this finding is a statement which sets forth the proceedings of the Interstate Commerce Commission and a resume of the evidence received on the hearing.

The petitioners brought suit against the United States to enjoin, by temporary restraining order and interlocutory preliminary injunction, the "Interstate Commerce Commis- [fol. 34] sion from making or entering the aforesaid order, finding, and determination that the line of the Chicago South Shore and South Bend Railroad is not a street, interurban, or suburban electric railway within the meaning of the exemption proviso in the first paragraph of section 1 of the Railway Labor Act, as amended, and that said order be set aside, annulled and suspended."

The Interstate Commerce Commission intervened.

The determinative question is one of jurisdiction.

Is the case one for the determination of a three judge statutory court? The answer to this question turns upon the character of the ruling which was made by the Interstate Commerce Commission.

A three judge statutory court is one of limited jurisdiction. Procter & Gamble v. United States, 225 U. S. 282; United States v. Atlanta, Birmingham & C. R. Co., 282 U. S. 522; United States v. Los Angeles & S. R. R. Co., 273 U. S. 299; Great Northern Ry. Co. v. U. S., 277 U. S. 172; Pittsburgh & West Va. Ry. Co. v. U. S., 281 U. S. 479

Its jurisdiction is limited to "cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission." Section 207 of the Judicial Code, U. S. C. Title 28 Sec. 41 (27) and (28).

We are therefore first called upon to determine whether the report of the Interstate Commerce Commission was an order of that body.

It may be readily conceded that it is not the name which the Commission gives to its action or to the document which evidences its action that determines whether it is a finding, [fol. 35] a report, or an order. For example, the Interstate Commerce Commission may call an order a report or the report may call an order a finding. Likewise, counsel may call

a finding an order or a conclusion, a finding. Courts are not interested in the names used, but in the action taken by the Interstate Commerce Commission.

The Supreme Court cases cited above apply to instances where a report was held not to contain an order. In United States vs. Los Angeles R. R. Co., supra, it is said:

"The final report on value, like the tentative report, is called an order. But there are many orders of the Commission which are not judicially reviewable under the provision now incorporated in the Urgent Deficiencies Act."

An examination of the entire report fails to show wherein the Interstate Commerce Commission made any order or direction to the carrier. It made a finding. Later it may make an order upon that finding. Likewise, it may modify its finding or withdraw it. Until an order, however, is made upon the finding, a three judge court is without jurisdiction to act. Such a court may "enjoin, set aside, annul, or suspend" only an order of the Interstate Commerce Commission.

Having no jurisdiction of the cause, it (a three judge court) cannot even determine whether an equitable cause of action is stated which may entitle the plaintiff to relief in the United States District Court for the Northern District of Indiana, South Bend Division. Such question is for the District Judge of that court to determine.

For the reasons stated this three judge statutory court must decline to take jurisdiction of the cause or grant the relief sought.

Slick, dissenting, in a separate memorandum.

Upon the filing of this memorandum the parties are directed to present a proper order and special findings of fact and conclusions of law.

[fol. 36] DISSENTING OPINION

SLICK, Judge (Dissenting):

The matter involved in this controversy appears so important to me that, notwithstanding the great respect I have for the majority opinion filed by my worthy Associate

Judges, I am constrained to briefly express my views in this dissenting opinion.

In United States et al. vs. Los Angeles and Salt Lake Railroad Company, 273 U. S. 299, relied upon by defendants, the Supreme Court seems to fix a rule for determining the question of jurisdiction of a three-judge court, depending upon whether the Interstate Commerce Commission in making its finding was exercising a quasi-judicial function to determine controversies.

In this case the Interstate Commerce Commission functioned in a quasi-judicial manner. The Railway Labor Act puts certain duties and obligations upon carriers, and in defining "carriers", the act provides that there shall not be included any street, interurban or suburban electric railway, unless such railway operates as part of a general steam railway system. The act authorizes and directs the Interstate Commerce Commission upon request of the Mediation Board to "determine after hearing whether any line operated by electric power falls within the terms of this proviso." The Mediation Board made such a request and this was in the nature, under the statute, of a suit. Notice was required and given. A hearing was had. Evidence was taken. Arguments were made and briefs filed. Then followed a final determination or order as follows: "We find that the line of the Chicago South Shore and South Bend Railroad is not a street, interurban or suburban electric railway within the meaning of the exemption proviso in the first paragraph of Section 1 of the Railway Labor Act as amended June 21, 1934, and it is therefore subject to the provisions of that act."

[fol. 37] In United States et al. vs. Los Angeles and Salt Lake Railroad Company, supra, which involved an appraisal of property only, the court in deciding that the case was not triable by a three judge court, said that the so called order did not "grant or withhold any privilege or license"; that the finding did not "extend or abridge any power or facility"; that the order did not "subject the carrier to any liability, civil or criminal; that the finding did not "change the carrier's existing or future status or condition."

The finding or order in this case does withhold a privilege; that accorded electric interurbans to exemption from the operation of the Railway Labor Act. It does abridge the rights and powers of the Chicago South Shore and South

Bend Railroad. It subjects the company to civil, possibly criminal, liability, and is so treated by the Mediation Board in demanding a compliance with the order. It changes the company's existing and future status from an electric interurban to a carrier, as defined under the Railway Labor Act, and determines the company's status and fastens upon it an obligation. It was in effect and for the purpose of the hearing, an order fixing and determining the status of the company and deciding that the company is "subject to the provisions of the act."

The act of Congress giving this court jurisdiction does not define or limit the nature of an order to render it reviewable. The order here is the final determination and finding that the South Shore is a carrier, and that it is therefore subject to the provisions of the Railway Labor Act.

The proceeding before the Interstate Commerce Commission was an adversary one, contested, tried, and decided like any other suit. It was a quasi-judicial proceeding fixing the status of the South Shore, fastening upon it certain obligations, rendering it subject to certain civil liabilities. What more could a final order do?

[fols. 38-39] I cannot avoid the conclusion that here was an order within the intent and purpose of Congress, and that this three judge court has jurisdiction. "We find" that the company is not an electric interurban and "that it is subject to the provisions of the Railway Labor Act". How much stronger would it have been had the Interstate Commerce Commission preceded its final decree by the formal words usually found in a court order "it is therefore ordered"? The real meaning of the Commission's finding is that the plaintiff is not an electric railway, and that it comes under the provisions of the Railway Labor Act, and that it shall be governed accordingly and submit to the regulations of the Mediation Board.

If this is not an order affecting the existing and future status of the Chicago South Shore and South Bend Railroad, it is hard to understand what it really is. Equity does not regard form and should not regard technicalities. It looks through the form to discover the merits. The real merits of this controversy are whether or not the Chicago South Shore and South Bend Railroad is to be governed as a carrier and compelled to comply with all the requirements of the state and federal acts applicable to carriers, or

whether it is in truth and in fact an electric interurban or suburban railway.

In my opinion the Interstate Commerce Commission was acting as a quasi-judicial body in making this ruling and order, and that therefore this court has jurisdiction.

[fol. 40] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

Findings of Fact and Conclusions of Law—Filed September 17, 1937

The above-entitled cause came on to be heard before a three-judge statutory court convened pursuant to the allegations of the petition herein, under the Urgent Deficiencies Act of October 22, 1913, Ch. 32, 38 Stat. L. 208, 219 (28 U. S. C. A., Sec. 41, Sub. 28), said court being composed of Hon. Evan A. Evans, Circuit Judge, and Hon. Robert C. Balzell and Hon. Thomas W. Slick, District Judges, upon the petition, the answer of defendant United States, the answer of the Interstate Commerce Commission, intervening defendant, and evidence introduced on behalf of the respective parties, and the matter having been submitted to [fol. 41] the court for its decision, the court makes and enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That on or about May 17, 1935, pursuant to request made of it by the National Mediation Board, the Interstate Commerce Commission instituted a proceeding entitled Railway Labor Act Docket No. 8, Chicago, South Shore and South Bend Railroad, wherein it undertook to determine whether said railroad was a street interurban or suburban electric railway such as falls within the exemption proviso of Section 1 of the Railway Labor Act, excluding from the force and effect thereof carriers of classes in said section described. That after due notice to all parties and a hearing, in which the Commission heard all the evidence offered by parties interested in said proceeding, the Commission issued a report, which appears as Exhibit A to its answer and

is officially reported 214 I. C. C. 167. That in said report the Commission found and determined that said railroad is not a street interurban or suburban electric railway within the term of said exemption proviso and that it is, therefore, subject to the provisions of said Railway Labor Act.

2. That the petition denominates and describes the Commission's said report, finding and determination as an "order", as said term is used in the Urgent Deficiencies Act of October 22, 1913, above referred to, and prays that said finding and determination be set aside, annulled and suspended and that the enforcement thereof be enjoined. Said petition further invokes the jurisdiction of a statutory three-judge court as provided for in said Urgent Deficiencies Act, pursuant to which this court has been convened.

[fol. 42] 3. That the answers of both defendants deny that said report, finding and determination of the Commission constitute an order as to which a three-judge court has power or jurisdiction under the statute to enjoin, set aside, annul or suspend, and moved that this statutory court dismiss said petition for lack of jurisdiction.

Conclusions of Law

1. The report, finding and determination of the Commission, with respect to the petitioners' railroad, made pursuant to the provisions of the Railway Labor Act, as referred to in the above findings of fact, is not an order of the Commission which, under the terms of the Urgent Deficiencies Act, this statutory court has jurisdiction to enjoin, set aside, annul or suspend.

2. Since this court has no jurisdiction over the subject matter of the petitioners' petition, this suit should be dismissed by this court for lack of jurisdiction.

To each of which said findings of fact and said conclusions of law the petitioners separately and severally object and except.

Evan A. Evans, United States Circuit Judge; Robt. C. Baltzell, United States District Judge; Thos. W. Slick, United States District Judge; Concurring in Findings of Fact and Dissenting as to Conclusions of Law.

[fol. 43] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

In Equity. No. 622

JOHN N. SHANNAHAN and CLAUDE J. JACKSON, as Trustees of the Property of Chicago, South Shore and South Bend Railroad, and Chicago, South Shore and South Bend Railroad, Petitioners,

vs.

UNITED STATES OF AMERICA, Defendant, and INTERSTATE COMMERCE COMMISSION, Intervening Defendant

ORDER OF DISMISSAL—Filed September 17, 1937

This case came on to be heard before a statutory three-judge court convened pursuant to the allegations of the petition, under the Urgent Deficiencies Act of October 22, 1913, on May 18, 1937, at South Bend, Ind., upon the petition and the separate answers of defendants United States and Interstate Commerce Commission and upon evidence introduced on behalf of parties, petitioner and defendant, and the court having heard argument and being fully advised in the premises:

It is thereupon Ordered, Adjudged and Decreed that this court has no jurisdiction over the cause of action stated [fols. 44-45] in the petition and the suit is hereby dismissed for want of jurisdiction, at the cost of the petitioners.

To which the petitioners separately and severally except.

Evan A. Evans, United States Circuit Judge. Robt. C. Baltzell, United States District Judge. Thos. W. Slick, Dissenting, United States District Judge.

[fol. 46] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF EXCEPTIONS—Filed September 17, 1937

Now on this 17th day of September, 1937, the Three Judge Statutory Court makes and files its special findings of fact and conclusions of law herein.

And upon the making and filing of said special findings of fact and conclusions of law come the petitioners and separately and severally except at the time said special findings of fact and conclusions of law are stated and filed by the Court, said exceptions being to the said findings of fact and to each of them and to the said conclusions of law and to each of them.

And now comes said Three Judge Statutory Court and makes, signs and files its final order herein dismissing the suit for want of jurisdiction at the cost of petitioners. And the petitioners come now at the time said order is entered and filed by the Court and separately and severally except thereto.

Forasmuch as the matters and things above set forth do not fully appear of record, the petitioners tender and present the foregoing Bill of Exceptions, and pray that the same may be settled, allowed, signed and sealed and [fols. 47-48] made a part of the record in this cause by the Court, which is accordingly done and ordered this 17th day of September, 1937.

Evan A. Evans, Circuit Judge. Robt. C. Baltzell, Dist. Judge. Thos. W. Slick, Dist. Judge.

Deposited in the Clerk's Office on the 17th day of September, 1937.

Margaret Long, Clerk, Helen Sweeney, Deputy.

[File endorsement omitted.]

[fol. 49] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR A DIRECT APPEAL TO THE UNITED STATES SUPREME COURT—Filed September 17, 1937

On June 22, 1936, John N. Shannahan and Claude J. Jackson, as Trustees of the property of the Chicago South Shore and South Bend Railroad, and Chicago South Shore and South Bend Railroad, filed a petition in the above entitled cause, pursuant to Section 209 of the Judicial Code

(Title 28 U. S. C. A., Sec. 45), in the District Court of the United States for the Northern District of Indiana, South Bend Division, invoking its jurisdiction under Subdivision 28 of Section 41 of Title 28, U. S. C. A. to set aside, annul and suspend the order, finding and determination of the Interstate Commerce Commission made February 14, 1936 (214 I. C. C. 167 to 173), in a proceeding under Section 1 of the Railway Labor Act. (Title 45 U. S. C. A., Sec. 151), determining:

"That the line of the Chicago South Shore and South Bend Railroad is not a street, interurban or suburban elec- [fol. 50] tric railway within the meaning of the exemption proviso in the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934, and it is therefore subject to the provisions of that act."

On July 6, 1936, the United States of America filed its answer and thereafter on August 17, 1936, the Interstate Commerce Commission filed its intervening petition and answer.

A special three judge statutory court was convened pursuant to the provisions of the Urgent Deficiencies Appropriation Act of October 22, 1913, Chapter 32, 38 Statutes at Large 220 (Title 28 U. S. C. A. Sec. 47). The case was heard in the District Court on May 18, 1937, and on August 16, 1937, an opinion and dissenting opinion were filed. Special findings of fact and conclusions of law were made and filed, and a final decree entered on the 17th day of September, 1937, dismissing the suit for want of jurisdiction.

The said decree is greatly to the prejudice and injury of your petitioners and is erroneous and inequitable and petitioners deem themselves aggrieved thereby for the errors assigned in the accompanying assignments of error filed with this petition.

The errors upon which your petitioners claim to be entitled to an appeal are more fully set out in the assignments of error and prayer for reversal, filed with the clerk pursuant to Rule 9 of the Rules of the United States Supreme Court; and there has been likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States as provided by Rule 12 of the Rules of the United States Supreme Court.

Wherefore, in order that your petitioners may obtain relief in the premises and have an opportunity to show the errors complained of, your petitioners pray for the allowance of an appeal in said cause to the Supreme Court [fol. 51] of the United States agreeably to the statutes and rules of said court in such cases made and provided, and that a proper order touching the security required of the petitioners may be made, that a citation issue and a transcript of the record be made and duly authenticated and sent to the United States Supreme Court, Washington, D. C.

John C. Lawyer, Counsel for Petitioners-Appellants.

In United States District Court

Order Allowing Appeal—Filed September 17, 1937

The petition of John N. Shannahan and Claude J. Jackson, as Trustees of the property of the Chicago South Shore and South Bend Railroad, and Chicago South Shore and South Bend Railroad, petitioners in the above entitled cause, for an appeal in the above entitled cause to the Supreme Court of the United States from the decree of the District Court of the United States for the Northern District of Indiana, South Bend Division, having been filed herein, accompanied by Assignments of Error and Statement as to Jurisdiction, all as provided by Rules 9 and 12 of the Rules of the United States Supreme Court, and the said papers having been presented to this court and the record in this cause having been considered;

[fols. 52-53] It is Hereby Ordered that said petition be and it is hereby granted and the appeal be and it is hereby allowed to the Supreme Court of the United States from the final decree of the District Court of the United States for the Northern District of Indiana, South Bend Division, and entered in this cause on the 17th day of September, 1937, and that the clerk of this court shall make and transmit to the Supreme Court of the United States under his hand and the seal of the court, a true copy of the material parts of the record herein, which shall be designated by praecipe or a stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is Further Ordered that the appellants shall give a bond in the sum of Five Hundred Dollars ($500.00) with good and sufficient surety to be approved by this court, conditioned as required by law;

It is Further Ordered that the bond and the surety thereon for the said sum now submitted by the appellants be and the same is hereby in all respects approved.

Done by the court this 17th day of September, 1937.

Evan A. Evans, Cir. Judge. Robt. C. Baltzell, Dist. Judge. Thos. W. Slick, Dist. Judge.

Whereupon a Citation is ordered issued, which is accordingly now issued.

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 17, 1937

Come now John N. Shannahan and Claude J. Jackson, Trustees of the property of Chicago South Shore and South Bend Railroad, and Chicago South Shore and South Bend Railroad, petitioners, and file the following Assignment of Errors upon which they will rely in the prosecution of the appeal in this cause and say that in the record, proceedings, order and decree entered herein manifest error has intervened to the prejudice of the petitioners in this, to-wit:

1. The court erred in dismissing the suit.

2. The court erred in decreeing that it had no jurisdiction over the cause of action stated in the petition and in dismissing the suit for want of jurisdiction.

3. The court erred in its conclusion of law that the report, finding and determination of the Commission, with respect to the petitioners' railroad, made pursuant to the provisions of the Railway Labor Act, as referred to in the above findings of fact, is not an order of the Commission which, under the terms of the Urgent Deficiencies Act, said statutory court has jurisdiction to enjoin, set aside, annul or suspend.

[fols. 55-56] 4. The court erred in its conclusion of law that it had no jurisdiction over the subject matter of the petitioners' petition, and the suit should be dismissed for lack of jurisdiction.

5. The court erred in concluding that the determination made February 14, 1936, by the Interstate Commerce Commission (214 I. C. C. 167, 173) as follows:

"We find that the line of the Chicago South Shore and South Bend Railroad is not a street, interurban, or suburban electric railway within the meaning of the exemption proviso in the first paragraph of section 1 of the Railway Labor Act, as amended June 21, 1934, and it is therefore subject to the provisions of that act";

is not an order of the Interstate Commerce Commission which the statutory court has jurisdiction to enjoin, set aside, annul or suspend.

Wherefore, petitioners pray that the order and decree may be reversed and for such other and further relief as to the court may seem just and proper.

Dated this 17th day of September, 1937.

John C. Lawyer, Attorney for Petitioners.

[fols. 57-59] Bond on appeal for $500.00, approved and filed September 17, 1937, omitted in printing.

[fol. 60] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL—Filed September 17, 1937

To Margaret Long, Clerk of Said Court:

The Clerk of said Court will please prepare and transmit to the Supreme Court of the United States under his hand and the seal of the United States District Court a transcript of the record in the above entitled suit which

has been appealed to the Supreme Court of the United States and include therein the following, to-wit:

1. Placitas and convening order of court.
2. The petition filed June 22, 1936.
3. The answer of the United States filed July 6, 1936.
4. The intervening petition and answer of the Interstate Commerce Commission filed August 17, 1936.
5. Opinion of court and dissenting opinion.
6. Special findings of fact and conclusions of law. Exceptions of Petitioners.

[fol. 61] 7. Decree entered on the 17th day of September, 1937.

8. Petition for appeal.
9. Assignments of Error.
10. Appellants' Statement as to Jurisdiction on Appeal.
11. Order allowing appeal.
12. Appeal bond.
13. Citation on appeal and service thereof.
14. Notice of service of Numbers 8, 9, 10 and 11 on appellees and directing attention to Supreme Court Rule 12(3) with proof of service.
15. Condensed statement of evidence.
16. All other orders or decrees of the court on said cause, if any.
17. This præcipe with attached notice and proof of service.
18. Certificate of Clerk and seal of court.

Said Transcript to be prepared as required by law and the rules of court and filed in the Office of the Clerk of the United States Supreme Court on or before the 27th day of October, 1937.

Dated this 17th day of September, 1937.

John C. Lawyer, Counsel for Petitioners-Appellants.

[fol. 62] IN UNITED STATES DISTRICT COURT

NOTICE OF FILING PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL PURSUANT TO SUPREME COURT RULE 10 AND EQUITY RULE 75; AND NOTICE OF LODGMENT OF CONDENSED STATEMENT OF EVIDENCE AND FIXING TIME FOR APPROVAL, PURSUANT TO EQUITY RULE 75—Filed September 17, 1937

To the Above Named Defendant-Appellee and Intervening Defendant-Appellee, and their Attorneys and Counsel:

You are Hereby Notified:

(a) that we have filed with the Clerk of said court, the above praecipe for transcript of record on appeal.

(b) that we have prepared and lodged in said Clerk's office for the examination of the other parties to this suit, a condensed statement of the evidence to be included in the record of this suit on said appeal as required by Equity Rule 75 and Supreme Court Rule No. 10.

(c) that we have fixed upon the 4th day of October, 1937, and eleven o'clock, A. M., or as soon thereafter as counsel can be heard, at the chambers of Judge Thomas W. Slick in the Federal Building in the City of South Bend, Indiana, as the time and place when we will ask the court or judge to approve said condensed statement of the evidence. A copy of said condensed statement of evidence is attached hereto and made a part hereof.

Dated this 17th day of September, 1937.

John C. Lawyer, Counsel for Petitioners-Appellants.

[File endorsement omitted.]

[fol. 63] PROOF OF SERVICE—Filed September 17, 1937

STATE OF INDIANA,
County of St. Joseph, ss:

John C. Lawyer, being duly sworn, deposes and says that he is one of the attorneys and solicitors for the Petitioners-Appellants in the above entitled cause, and that on the 17th day of September, 1937, at the United States Post Office in South Bend, Indiana, he mailed by depositing in the

United States mail in said Post Office, postage prepaid, an envelope properly addressed to Leo F. Tierney, Special Assistant to the Attorney General, Department of Justice, Washington, D. C., containing a true copy of the above and foregoing praecipe for transcript of record on appeal, and notice of filing same and lodging in the Clerk's office of a condensed statement of evidence to be included in the record on appeal and notice of fixing time for approval thereof, with a true copy of said condensed statement of evidence thereto attached.

Deponent further deposes and says that at the time and place last aforesaid, he mailed by depositing in the United States mail, postage prepaid, an envelope properly addressed to Nelson Thomas, Attorney for Interstate Commerce Commission, Washington, D. C., containing a true copy of the above and foregoing praecipe for transcript of record on appeal, and notice of filing same and lodging in the Clerk's office of a condensed statement of evidence to be included in the record on appeal, and notice of fixing time for approval thereof, with a true copy of said condensed statement of evidence thereto attached.

Deponent further deposes and says that at the time and place last aforesaid he mailed by depositing in the United States mail, postage prepaid, an envelope properly addressed to Luther Swygart, Assistant United States District [fol. 64] Attorney, Hammond, Indiana, containing a true copy of the above and foregoing praecipe for transcript of record on appeal and notice of filing same and lodging in the Clerk's office of a condensed statement of evidence to be included in the record on appeal, and notice of fixing time for approval thereof, with a true copy of said condensed statement of evidence thereto attached.

John C. Lawyer.

Subscribed and sworn to before me this 17th day of September, A. D. 1937. Joseph W. Mikos, Notary Public. My commission expires Dec. 19, 1938. (Seal.)

[File endorsement omitted.]

[fols. 65-67] Citation, in usual form, showing service on Leo F. Tierney et al., filed September 25, 1937, omitted in printing.

[fol. 68] [File endorsement omitted]

[fol. 69] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

In Equity. No. 622

JOHN N. SHANNAHAN and CLAUDE J. JACKSON, as Trustees of the property of Chicago, South Shore and South Bend Railroad, and Chicago, South Shore and South Bend Railroad, Petitioners,

vs.

UNITED STATES OF AMERICA, Defendant, and INTERSTATE COMMERCE COMMISSION, Intervening Defendant.

Condensed Statement of Evidence Heard May 18, 1937, Before a Statutory Three-Judge Court and Upon the Issues Formed by the Petition, Answer of the United States of America and Intervention and Answer of Interstate Commerce Commission—Filed October 4, 1937.

The petitioners introduced the following evidence:

CHARLES H. JONES being duly sworn testified:

My name is Charles H. Jones and I reside in Michigan City, Indiana. I am general manager for the Trustees of the property of the Chicago, South Shore and South Bend Railroad. I was present at all the proceedings with reference to the determination by the Interstate Commerce Commission under the Railway Labor Act of the status of the lines of the Chicago, South Shore and South Bend Railroad and I obtained and have a transcript of all proceedings before the Interstate Commerce Commission certified by the Secretary of the Commission.

The Transcript of the proceedings before the Interstate Commerce Commission, certified by the Secretary of the Commission was offered, admitted and read in evidence as Petitioners' Exhibit No. 1.

[fol. 70] PETITIONERS' EXHIBIT 1.

Petitioners' Exhibit 1 is the transcript of the proceedings before the Interstate Commerce Commission, certified by

George B. McGinty under date of October 2, 1936, and the seal of the Commission attached.

On August 9, 1934, the National Mediation Board, pursuant to Section 1, First, of the Railway Labor Act, as amended June 21, 1934 (45 U. S. C. A. Section 151), requested the Interstate Commerce Commission to determine whether the lines of railroad operated by Chicago South Shore and South Bend Railroad, herein called "South Shore," fall within the terms of the proviso of the first paragraph of said Section, which proviso exempts from the terms of the Act any street, interurban or suburban electric railway unless such railway is operating as a part of a general steam railroad system of transportation. The request also covered the lines of railway operated by eleven other companies.

On May 17, 1935, the Interstate Commerce Commission, pursuant to said request of the National Mediation Board, gave notice to the Chicago South Shore and South Bend Railroad that the matter of determining the status of the South Shore under the proviso of the first paragraph of Section 1 of the Railway Labor Act had been assigned for hearing at the Hotel Morrison, Chicago, Illinois, June 29, 1935.

On June 29, 1935, at 10 o'clock A. M., at the Hotel Morrison in Chicago, Illinois, E. M. Steer, Examiner for the Interstate Commerce Commission, conducted a hearing at which evidence was introduced on behalf of the South Shore, it contending that it is exempt as an interurban, and on behalf of the Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Engineers, Order of Railway Conductors, Brotherhood of Railway Firemen, and other labor organizations.

[fol. 71] Mr. CHARLES H. JONES, General Manager of the South Shore, testified and exhibits were offered in evidence showing the following facts:

The South Shore was incorporated under an act of the State of Indiana entitled "An Act to Provide for the Incorporation of Street Railroad Companies," approved June 4, 1861, and the various acts amendatory thereof and supplementary thereto (Vol. 3, Burns' Ann. Ind. Stat. 1926 Ed., par. 13297, et seq.). Its Articles of Association were filed with the Secretary of State of Indiana and recorded in

the Recorder's Office of LaPorte county, Indiana, on June 23, 1925.

The objects and purposes of the South Shore as stated in its Articles of Association are:

"(a) To construct, acquire, own and maintain street railroads, switches and sidetracks upon and through the streets and public ways of the cities and towns, or any of them, hereinafter named;

"(b) To maintain and operate, and to that end to construct, purchase, lease or otherwise acquire, own and control street railroad, interurban street railroad and suburban street railroad lines and systems, or any part or parts thereof, and all property appertaining thereto or to be used in connection therewith, in, through, between and connecting the cities and towns of South Bend, New Carlisle, Hudson Lake, Michigan City, Aetna, Gary, Hammond and East Chicago, or any of them, all in the State of Indiana, and extending to the state line between the states of Indiana and Illinois, and thence to the city of Chicago, Illinois, and extending to the state lines between the State of Indiana and all other states adjacent thereto, or any of them; and lines and systems, or part or parts thereof, of street railroad, interurban street railroad, and suburban street railroad, within the State of Indiana and elsewhere, which connect, or will connect, with the lines and systems of street railroad, interurban street railroad and suburban street railroad of this Company; and to take, transport, carry and convey passengers and property on said railroad lines and systems, and to receive tolls and compensation therefor;"

July 10, 1925, the South Shore was duly admitted to do business in Illinois as a street interurban and suburban railroad.

The South Shore accepted the provisions of the Indiana [fol. 72] General Corporation Act (Vol. 6, Burns' Ann. Ind. St. 1933 Ed., Sec. 25-101 to 25-254), by executing its Articles of Reorganization and filing them with the Secretary of State of Indiana on September 18, 1929, the same being recorded in LaPorte county, Indiana, on October 3, 1929. The powers and purposes are stated in exactly the same language in the Articles of Reorganization as in the Articles of Association above quoted.

The Articles of Reorganization were executed pursuant to the provision of Section 25-245, Volume 6 Burns' Annotated Indiana Statutes, 1933 Edition, which is a part of the General Corporation Act of 1929 of Indiana.

Directors and Officers.

The South Shore has seven directors, a president, two vice presidents, secretary, treasurer and general auditor. Its executive offices are located in Michigan City, Indiana.

Acquisition of Property.

The South Shore purchased the franchises, rights and railroad property it now operates at a foreclosure sale on June 29, 1925, for $6,000,000.

Incorporation of Lake Shore.

The Chicago Lake Shore and South Bend Railway Company, herein called the "Lake Shore," constructed the railroad in 1907 to 1909 and operated it until it was sold at said foreclosure sale. The Lake Shore was incorporated under the laws of Indiana under the name of "Chicago and Indiana Air Line Railway Company," its Articles of Incorporation being filed with the Secretary of State of Indiana on December 2, 1901. Its name was changed October 6, 1904, to "Chicago Lake Shore and South Bend Railway Company" and on October 9, 1924, the name [fol. 73] was changed to "The Chicago Lake Shore and South Bend Railway Company." The Lake Shore was also incorporated under the Act of 1861 for the incorporation of street railroads. Its Articles of Incorporation show its purpose was the

"constructing, owning, maintaining and operating a street railway, including the switches and all the side tracks necessary thereto, in, upon and through the streets, alleys and public ways of the cities of South Bend, in St. Joseph county, Indiana; Michigan City, in LaPorte county, Indiana; East Chicago in Lake county, Indiana; thence into the city of Chicago, Illinois, together with an interurban railway passing between and connecting the cities and towns aforesaid, for the carriage of passengers, mail, express matter and freight."

Franchises

The following cities granted the Lake Shore franchises to lay its tracks at grade in the streets and to operate a street and interurban railway and carry passengers, freight and express, viz: South Bend, New Carlisle, Michigan City, East Chicago, Hammond, and the town of Miller, all in Indiana. Under these franchises the Lake Shore, in 1907 to 1909, built that part of the railway in question located in Indiana.

The Lake Shore surrendered said franchises June 14, 1922, and received an indeterminate permit under the pursuant to the provisions of the Public Service Commission Law of Indiana. The order of the Public Service Commission of Indiana, approved June 14, 1922, in Nos. 6639 to 6644, shows the surrender of said franchises.

The Public Service Commission Act of Indiana provides that any public utility operating under any franchise from any county, city or town within the state of Indiana shall, upon filing at any time prior to July 1, 1923, with the clerk of the county, city or town which granted the franchise and with the Public Service Commission of Indiana, a written declaration legally executed, that it surrenders such franchise, receive by operation of law, in lieu [fol. 74] thereof, an indeterminate permit as provided in said Act.

Vol. 10 Burns' Ind. Stat. Ann., 1933 Ed. Sec. 54-605.

The fact of the surrender of the franchises and that the railroad property is operated under an indeterminate permit and as an interurban street railroad has the right to carry freight upon its tracks was adjudicated by the Supreme Court of Indiana in 1926 in the case of *Chicago Lake Shore and South Bend Railway Company* v. *Guilfoyle,* 198 Ind. 9; 152 N. E. 167; 46 A. L. R. 1465.

Reorganization Proceedings

The South Shore filed its petition No. 972 in the United States District Court at South Bend, Indiana, September 30, 1933, to effect a plan of reorganization under Section 77 of the Acts of Congress Relating to Bankruptcy. The court in said proceeding entered an order approving the petition as properly filed and authorizing and directing the debtor to run and operate the railroad.

South Shore Not Part of a Steam Railroad System.

The South Shore is not connected by stock ownership, directly or indirectly, with any steam railway system in any manner. The South Shore is not operating as a part of a general steam railroad system of transportation.

Construction of Property.

The electric street and interurban railway in question was constructed in 1907 to 1909 from South Bend, Indiana, through New Carlisle, Hudson Lake, Michigan City, Gary, East Chicago and Hammond in the State of Indiana to the Indiana-Illinois State Line in Hammond, and thence northwesterly to the Kensington Station of the Illinois Central Railroad in the south part of Chicago.

[fol. 75] The portion in Indiana, approximately 69 miles, was built by the Lake Shore. The portion between the Indiana-Illinois state line in Hammond and the Kensington Station of the Illinois Central Railroad in Chicago, approximately 6.39 miles, was constructed and owned by the Kensington & Eastern Railroad Company, and the use of it was acquired by the Lake Shore under a contract dated October 18, 1904.

The Illinois Central Railroad Company has a right to operate on the tracks leased by the South Shore from the Kensington & Eastern Railroad Company for about a mile south to Kensington to the icehouse. In one or two emergencies the Illinois Central engines have hauled trains over the leased tracks to Burnham.

Operation

The railroad was operated by the Lake Shore from its construction in 1909 until July 13, 1925, when it was sold through the foreclosure of a mortgage to the South Shore. Since July 13, 1925, it has been operated by the South Shore. Both the Lake Shore and the South Shore have at all times operated all trains and the railway exclusively with electric power and neither at any time has used any other means of operation. From the summer of 1925 to the summer of 1926 when the overhead catenary system of the South Shore was rebuilt there were some construction trains used which were operated by steam. They were used intermittently for about a year. The electric energy

for the operation of the trains and railway system of the South Shore is purchased by it from the Northern Indiana Public Service Company.

The South Shore uses a catenary type contact and distribution system, except in the city streets mentioned where there is a direct suspension contact system used. No third rails are used. The voltage used is 1,500 volts, direct current. Its repair shops are maintained at Michigan City. It [fol. 76] makes general repairs on its cars at these shops.

The investment of the South Shore in its said road and equipment is a little over $13,035,058.

Mileage

The mileage between termini operated by the South Shore is as follows:

South Bend, Indiana, to Indiana-Illinois State Line in Hammond	69.19 miles
Illinois-Indiana State Line to Kensington over tracks of the Kensington & Eastern Railroad Company	6.39 miles
Kensington to Randolph Street in Chicago over the tracks of the Illinois Central Railroad Company	14.20 miles
Total between termini	89.78 miles

The first main track consists of 75.37 miles of which 55.11 miles is a single track and 20.26 miles is double track. The second main track consists of 20.26 miles.

The portion in Indiana is owned by the South Shore with the exception of trackage rights for .21 of one mile over the Northern Indiana Railway, Incorporated, in South Bend, Indiana. The portion between the Illinois-Indiana State Line to Kensington is operated over the Kensington & Eastern Railroad Company's tracks by virtue of the contract of October 18, 1904, above mentioned.

The portion between Kensington in Chicago and Randolph Street in Chicago is operated over the electrified suburban tracks of the Illinois Central Railroad Company under a trackage contract. The rights of the South Shore are confined to that portion of the elevated tracks of the Illinois Central Railroad Company which are used by it for electrified suburban service.

The South Shore operates through the city streets of the cities of East Chicago, Michigan City and South Bend. The [fol. 77] mileage in the streets of each of said cities is as follows:

In South Bend, Indiana	1.95 miles
In Michigan City, Indiana	2.42 miles
In East Chicago, Indiana	1.61 miles
Total mileage in city streets	5.98 miles

or 6.6 per cent of the mileage between South Bend and Randolph Street in Chicago.

Right of Way

The South Shore operates over 62.98 miles of right of way owned by it, the width of which varies, but the greater portion is 66 feet in width. The greater portion of the right of way was purchased, but a considerable portion was acquired by exercise of the power of eminent domain.

The laws of Indiana, Act of 1901, give a street and interurban railroad the right and power of eminent domain to condemn a right of way four rods wide. Vol. 10, Burns' Ann. Ind. Stat. 1933 Ed. Sec. 55-3601.

Tracks, Roadbed and Bridges

All of the tracks are standard gauge, that is 4 feet 8½ inches wide.

The maximum grade is 2½ per cent with the current of traffic. The ruling grade is level. The maximum curvature is 10 degrees. The roadbed is generally ballasted with gravel and although it compares favorably with the ballast of steam railroads in the same vicinity it is not equal to that of the large trunk line steam railroads.

The South Shore uses creosoted oak ties. It uses a standard "T" rail. The greater portion of the rails used weigh 100 pounds per yard, but there are some weighing 70, 90 and 130 pounds per yard. There are two short sections of gauntlet rail over two single track bridges. The rails are bonded for electrical transmission.

[fol. 78] The bridges of the carrier are of truss and through girder type. They are built according to Cooper's Specifications for Bridges E-35 and E-50. There is a bridge

in Chicago Avenue in East Chicago, Indiana, over which the tracks of the railroad extend and this bridge belongs to the city of East Chicago. It is also used for street and auto traffic.

Signal and Protective Devices

The South Shore uses track circuit color light block signals and flashing light crossing protecting devices. The trains are operated under orders and block signals. It does not have cattle guards along its line.

The South Shore uses interlocking signal devices in connection with other carriers as follows:

Michigan City—electric interlocking plant with the Michigan Central and Monon Railroads;

East Chicago—mechanical interlocking plant with the Indiana Harbor Belt and the Elgin, Joliet & Eastern Railroads;

Ind.-Ill. St. Line—electric mechanical interlocking plant with Indiana Harbor Belt and Western Indiana Railroads;

Burnham—electro mechanical interlocking plant with the Pennsylvania and Western Indiana Railroads;

Kensington—electric interlocking plant with the Illinois Central Railroad.

Passenger Operations

The South Shore maintains passenger stations and agents at South Bend, Michigan City, Beverly Shores, Tremont, Gary, East Chicago, Hammond, Hegewisch, and has use of the Illinois Central passenger stations at Kensington, 63rd Street, 53rd Street, Roosevelt Road, Van Buren Street and Randolph Street in Chicago. It maintains all necessary [fol. 79] facilities for the convenience of passengers in its stations.

It has 62 passenger cars, 49 of which are motor cars and the balance trailers. Its passenger cars are of the type generally used by interurban railways. The cars seat from 44 to 56 passengers, while the cars of steam railroads seat from 76 to 98 passengers. It has two dining cars and four parlor cars not in use. It has no Pullman cars, no express cars and no baggage cars. Ten of the passenger cars have baggage compartments.

The only through passenger tickets sold by the South Shore are over the Illinois Central Railroad and the Chicago, Indianapolis and Louisville Railroad. It does not sell through Pullman tickets. It carries baggage and express packages. It does not carry the United States Mail.

The South Shore participates in a few isolated cases in joint passenger fares with steam railroads, namely, Illinois Central and the Monon. The passenger traffic originating on other lines and interchanged is less than one-half of one per cent of the passenger revenue of the South Shore.

The South Shore interchanges passes with standard carriers which it has a right to do under the case of United States v. Erie, 236 U. S. 259, at 267 to 272; 59 L. Ed. 567, at 571-3, which holds that carriers subject to the Interstate Commerce Act may issue passes to officers, agents and employes of carriers not subject to the act.

The freight is handled by electric engines. The passenger trains are multiple type motor cars and no electric engines are used to pull passenger trains.

Most South Shore passenger trains are one coach. Four [fol. 80] or five trains are longer. Steam trains run up to 12 and 15 cars. On one rare exception the South Shore had 20 passenger coaches in a train. The maximum in normal times is from 2 to 6. Excursion trains are about 10 coaches long. Traffic requires trains of from 1 to 12 passenger cars at different periods of time.

From Chicago to South Bend the South Shore parallels the New York Central. It competes with the Michigan Central from Michigan City into Chicago. The South Shore makes country stops for passengers between towns. The South Shore advertises its freight and passenger service.

The local passenger fare on the South Shore is 3.6 cents per mile. It operates passenger trains each day as follows:

18 through trains from South Bend to Chicago;
19 through trains from Chicago to South Bend;
2 trains from Michigan City to Chicago;
1 train from Chicago to Michigan City;
12 trains from Gary to Chicago;
12 trains from Chicago to Gary;
Total 64 trains daily. The railroad time tables were introduced.

Freight Operations

Freight stations and agents are maintained at Kensington, Hammond, East Chicago, Gary, Michigan City and South Bend. It has switch tracks at said stations and also at Hegewisch.

The South Shore has facilities for the interchange of standard steam railroad freight equipment in carload lots without breaking bulk with the following steam railroads:

With New York Central, Monon and Nickel Plate at South Bend;
With Michigan Central at Michigan City;
With Elgin, Joliet & Eastern at Goff (Gary);
With Pennsylvania and Wabash at Gary;
With Indiana Harbor Belt, Baltimore & Ohio Chicago Terminal Railroad at East Chicago;
[fol. 81] With Western Indiana and Belt Railroad of Chicago at Hegewisch;
With Pullman Railroad and Illinois Central at Kensington.

The capacity of the interchange tracks for interchange with the roads above mentioned is from about 15 to 50 cars.

The South Shore has 15 industrial side tracks serving industries as follows:

6 in South Bend.
5 in Michigan City.
2 between Michigan City and Gary.
1 in Gary.
1 in Hegewisch.

It has freight yards for storage of cars at South Bend, Michigan City and Burnham.

The South Shore does not maintain any classification yards but does such work upon its interchange and storage tracks.

The South Shore has 12 electric locomotives of 85 tons each, and 2 electric locomotives of 50 tons each for the hauling of freight. It has no steam locomotives and no electric storage battery locomotives. It has one merchandise dispatch car. It has no refrigerator cars. The South Shore has 16 revenue freight cars and 6 material cars. This equipment is interchangeable with steam railroads. The South Shore has never used steam locomotives.

Less than carload freight (l.c.l.) is accepted at the Kensington station for delivery to other carriers. Employes are required to be familiar with the general rules as to packing, labeling and handling l.c.l. freight. The l.c.l. freight has dropped to nearly zero, practically all having been diverted to trucks.

A large portion of the freight cars handled belong to [fol. 82] other carriers. The South Shore makes such repairs as are absolutely necessary to send foreign cars home. The expense of the repairs is billed under rules of American Railway Association (A.R.A.) to the owning carriers. This agreement is reciprocal. About 100 foreign cars are repaired per month.

Coal is received from connecting carriers and hauled over the South Shore lines and delivered at Kensington to the Illinois Central. The coal is delivered about equally to the Indiana Harbor Belt at Hegewisch and the Western Indiana and Illinois Central at 124th Street.

The number of cars in a freight train is limited by the trailing load of approximately 4,000 tons. This is generally about 40 to 55 cars, although it may run up to 60 or 70 cars. The freight traffic is generally carload business of mixed variety, but the predominating commodity is coal. The coal is received from steam railroads from the east and south. The South Shore handles grain and merchandise. The grain originates on steam roads in the Minneapolis territory and is delivered to eastern carriers. About 90 per cent of the freight traffic is interstate. About 90 per cent of the traffic is interchanged with steam railroads. The South Shore participates in joint freight tariffs, but those applying generally to points throughout the country are a relatively small part of the total.

The acts of 1920 of Indiana, Chapter 6, Section 1, page 32, give all interurban railways the right to haul freight. This section appears in Volume 10, Burns' Indiana Statutes Annotated, 1933, Section 55-3602, and is as follows:

"*All interurban railway companies* now or hereafter organized and operating or which may hereafter operate in this state, in addition to the rights, privileges and powers already given and granted by law to such companies, *are hereby empowered to transport over their respective roads* [fol. 83] and over the tracks of all street and interurban

railways over which they have traffic contracts, and over, across and along and upon all highways, streets and alleys, and public places occupied by such roads and tracks, or which may, in the future, be occupied by them, *all classes of freight,* subject, however, to the rules and regulations of the public service commission of Indiana."

Tariffs.

The South Shore files freight and passenger tariffs with the Interstate Commerce Commission, the Public Service Commission, of Indiana, and the Illinois Commerce Commission. It maintains its own tariff bureau. It files concurrences with the Interstate Commerce Commission and Illinois and Indiana State Commissions.

It has in effect 22 local freight tariffs and 9 joint freight tariffs. It has filed concurrences under which it participates with 124 railroads in carrying freight routed over its lines.

It has 19 local passenger tariffs and one interline passenger tariff. It is a participating carrier under 4 passenger tariffs of other railroads.

The South Shore reports, for publication in Dunn's freight tariff, information as to restrictions on transportation by rail of explosives and other dangerous articles by freight, pursuant to 18 U. S. Code Ann. 383, which applies to all common carriers in interstate commerce.

Development of Freight Business

The South Shore had no freight business prior to 1916. A comparison of passenger and freight revenue is as follows:

Year	Passenger Revenue	Freight Revenue
1909	$133,456	None
1910	278,944	None
1911	286,803	None
1912	320,746	None
1913	413,098	None
1914	359,062	None
1915	335,058	None
1916	449,070	$4,807
[fol. 84] 1917	516,668	27,845
1918	581,231	56,295

Year	Passenger Revenue	Freight Revenue
1919	630,629	89,941
1920	675,226	171,732
1921	577,601	148,904
1922	598,355	241,268
1923	690,007	230,367
1924	620,101	172,924
1925	599,236	189,263
1926	750,539	249,138
1927	1,640,506	589,963
1928	1,756,636	1,227,581
1929	2,026,664	1,546,263
1930	1,856,825	1,596,246
1931	1,332,101	1,456,714
1932	827,839	957,419
1933	806,512	812,008
1934	832,320	922,227

The percentage of operating revenues derived from the transportation of freight was greatest in the year 1932, when the revenue from freight was 51.45 per cent of the total operating revenues of the South Shore. Before and since 1932 the percentage has been less. The gross revenues of all Class 1 railroads in the United States, as a whole, amounted to $3,095,448,888 in 1933 and of this amount the passenger revenues were $329,341,854, or 10.6 per cent.

In 1920 passenger revenues of Class 1 railroads in the United States were apparently at the peak. In that year the total operating revenues of the Class 1 railways of the United States were $6,178,438,459, of which the passenger revenue was $1,288,503,573, or 20.8 per cent.

The percentage of operating revenues from the transportation of freight received by the South Shore at its peak was far less than the steam railroads enjoyed.

Federal Control

The South Shore was not under federal control during the World War or subsequent thereto.

Restriction on Carrying Livestock

The South Shore does not carry horses, cattle, hogs, or [fol. 85] any kind of livestock over its railway. Six miles of its right of way were obtained through sections 1, 2, 3,

4, 5 and 6 in township 36 north, range 8 west of the second principal meridian in Gary, Lake county, Indiana, by purchase of a strip 66 feet wide through said sections from Gary Land Company under a deed dated February 19, 1908, and recorded June 25, 1908, in the Recorder's office of Lake county, Indiana, in book 137, at page 130, et seq., and the said deed provides that it is an express condition that no horses, cattle, hogs or any kind of livestock shall ever be carried on or over said strip of land, that said strip shall be used for no other purpose than a street and interurban electric road.

Employes.

Employes of the South Shore who operate trains stand examination on the rules. They take the standard railroad examination. They take a physical examination. Where they operate on the tracks of the Illinois Central Railroad Company, employees are required to take an examination on the rules of that company.

The South Shore has 25 passenger crews and 5 freight crews.

The average number of South Shore employes per year for the ten years from 1925 to 1934, inclusive, was highest in 1928 when there were 832 and lowest in 1934 when there were 463.

Year	Average Number of Employes
1925	681
1926	693
1927	689
1928	832
1929	829
1930	682
1931	637
1932	492
1933	467
1934	463

Contention of South Shore

The Railway Labor Act, approved May 20, 1926, as amended, was never intended by Congress to include, and does not include, interurban electric railways, such as the South Shore. The electric interurban railways have no [fol. 86] representation on the National Railroad Adjust-

ment Board established by the Act. The representatives of the carriers on the National Railroad Adjustment Board were chosen by the steam railroads and the interurban electric railways had no voice in selecting the representatives of the carriers on the National Railroad Adjustment Boards.

The South Shore was denied membership in the Central Passenger Association and Central Freight Association because it was an electric railroad. It is an associate member, with no voting rights, in the American Railway Association now Association of American Railroads.

The South Shore is an interurban electric railway and interurban electric railways are not included in, and in fact are excluded from, the provisions of the Railway Labor Act of the United States.

The labor organizations called witnesses to testify as follows:

HUGH SUTTON:

I reside at Michigan City, Indiana, and am passenger conductor on the South Shore. The greater portion of the business handled is interchange freight originating off the line. I think about 90 per cent of the freight originates off the line. The employes take a standard railroad examination.

Coal is exchanged with the Illinois Central at 124th Street or Kensington. Coal is delivered to the Indiana Harbor Belt Railroad. It is also delivered at South Bend through the New York Central and at Michigan City through the Nickel Plate and the Monon. It could be delivered by steam roads independently of the South Shore.

H. J. LOCHMAIER:

I reside at Michigan City, Indiana. The South Shore con-
[fol. 87] nects with about 11 different steam railroads at 10 different points. Freight trains are sometimes 60 cars and sometimes 80 empties. The average day is 12 hours and no overtime is paid until after 12 hours. The employes are required to take physical examinations.

The South Shore operates over 14 miles of the Illinois Central in Chicago. I am an engineer on the South Shore.

JACOB M. RITCHIE:

I reside at Michigan City, Indiana. I am a conductor in the passenger service on the South Shore. I have been in the freight service.

The Illinois Central tracks are elevated and the freight and passenger tracks of the Illinois Central are on the same level. About 75 to 90 per cent of the freight business originates off the line. Perhaps not more than one-half of 1 per cent of the passenger business originates off the line. I think the South Shore is a half breed between an interurban and a railroad.

The South Shore passenger trains are 1 coach, four or five of them are longer, while steam railroads run 12 to 15 cars. The South Shore is less than half in that respect. 20 passenger coaches is the maximum handled in one train. On the average there are not more than 2 coaches and normally the maximum is not more than 5 or 6 coaches. Only on one rare exception was there 20 coaches. That was unusual. Excursion trains usually have no more than 10 coaches.

I have worked on steam railroads for 10 years before I came to the South Shore. I commenced railroad work in 1900.

Between Chicago and South Bend the South Shore parallels the New York Central Railroad. The South Shore makes passenger stops between towns in the country and at road crossings.

W. W. MCKIBCHY:

The Brotherhood of Railroad Trainmen contends that [fol. 88] the South Shore is not an interurban. Since the year 1930, freight revenues have consistently exceeded passenger revenues. We contend that under the Piedmont and Northern Railway Company v. Interstate Commerce Commission, 286 U. S. 299, the South Shore is not an interurban. We call attention to the decisions of the Interstate Commerce Commission in Waterloo, Cedar Falls and Northern Railway, The Texas Electric Railway and Sacramento Northern Railway, in which the Commission recently decided that they were not interurbans, and on May 13, 1935 entered an order denying a petition for rehearing. We offer the advertisement in the Official Railway Guide,

page 1118, which shows the connection of the South Shore with freight service. The South Shore connects with the New York Central at South Bend, the Michigan Central, Monon and Nickel Plate at Michigan City, Pennsylvania and Wabash at Gary, E. J. & E. at Goff Junction, Gary, Indiana Harbor Belt and B. & O. C. T. at East Chicago, Chicago and Calumet River Railroad at Hegewisch, and Illinois Central and Pullman Railroad at Kensington. Through rates are published in principal tariffs and apply by way of principal railroads.

It advertises 64 passenger trains each day between Chicago, Hammond and East Chicago and 66 daily to Gary, and 36 daily between Chicago and South Bend.

E. K. HOGAN:

I am general vice president of the Brotherhood of Railway Firemen.

The I. C. C. reports indicate that the revenue from passenger and freight is about a 50-50 proposition. About 100 foreign cars receive repairs in a month in the South Shore shops.

In my opinion the South Shore is a part of the general steam system of transportation.

[fol. 89] R. H. HAUSER:

I am a motorman, have been for 11 years. There are 25 passenger crews and 5 freight crews. The South Shore operates under train orders and block signals.

I am in the passenger service. The passenger trains are from 1 to 12 cars, whatever is required. In freight service the maximum number of cars has been 87. A good many of them were empties. Generally the freight trains are 40 to 55 cars.

RECITAL AS TO SOUTH SHORE EXHIBIT 1

Exhibit 1 of the South Shore was admitted in evidence containing 14 documents, being time tables, annual reports, indeterminate permit, articles of incorporation, amendments thereto, admission to do business in Illinois, receipts for

6 years, 1929 to 1934, revenue, expenses and income for 5 years, 1930 to 1934, and passenger and freight revenue from 1909 to 1934.

The hearing before Examiner Steer was closed on June 29, 1935.

The foregoing was all the evidence offered before the Interstate Commerce Commission and briefs were filed by the South Shore on August 7, 1935 and by the labor organizations on August 10, 1935. Oral arguments were held on November 19, 1935 and on December 30, 1935, John N. Shannahan and Claude J. Jackson, as Trustees of the property of Chicago South Shore and South Bend Railroad filed their written appearance in the proceedings.

REPORT AND ORDER

On February 14, 1935, the Interstate Commerce Commission filed its report (214 I. C. C. 167 to 173). The report recites the proceedings and summarizes the evidence, and concludes as follows:

"We find that the line of the Chicago South Shore and South Bend Railroad is not a street, interurban, or subur- [fol. 90] ban electric railway within the meaning of the exemption proviso in the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934, and it is therefore subject to the provisions of that act."

A printed copy of the report is attached to the answer of the Interstate Commerce Commission filed in this suit on August 17, 1936.

On April 11, 1936, the South Shore filed its petition for rehearing and the labor organizations filed a reply on April 15, 1936, and on May 11, 1936 the Commission entered its order as follows:

"Railway Labor Act Docket No. 8

Chicago South Shore and South Bend Railroad

Upon consideration of petition for rehearing by the above named railroad and the trustees of its property, also a reply to such petition on behalf of the Railway Labor

Executives' Association and other labor organizations, and further consideration of the record herein:

It is ordered, That said petition be, and it is hereby, denied."

Counsel for the South Shore on September 25, 1936, filed a præcipe with the Secretary of the Interstate Commerce Commission requesting a complete authenticated transcript of the record in the proceedings under Railway Labor Docket No. 8 on the request of the National Mediation Board to determine the status of the South Shore under the proviso of the first paragraph of Section 1 of the Railway Labor Act, as amended June 21, 1934.

The foregoing is a condensed statement of Petitioners' Exhibit 1, being the transcript of the proceedings before the Interstate Commerce Commission.

On the trial before the three judge court, petitioners' witness Charles H. Jones continued his testimony as follows:

[fol. 91] As general manager for the Trustees, I have had correspondence with the National Railroad Adjustment Board concerning labor matters under the Railway Labor Act.

Petitioners' Exhibit No. 2 is a letter dated February 18, 1937, which I received from H. A. Johnson, Secretary of the Third Division of the National Railroad Adjustment Board.

Petitioners' Exhibit No. 3 is a copy of the my reply dated February 19, 1937, and Petitioners' Exhibit No. 4 dated March 19, 1937, is a letter from Mr. H. A. Johnson, Secretary of the Third Division, National Railroad Adjustment Board in reply to my letter of February 19, 1937.

Petitioners' Exhibit Nos. 2, 3 and 4 were offered, admitted and read in evidence.

Petitioners' Exhibit 2

Petitioners' Exhibit No. 2, letter of H. A. Johnson dated February 18, 1937, states that the National Railroad Adjustment Board, Third Division, has received notice from the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees of intention to

file within thirty (30) days ex parte submissions involving unadjusted disputes, namely:

(1) Claims of employees for restoration of two positions of freight ticket clerks at Hegewisch, Illinois, and reimbursement for all wage losses suffered by the regular assigned incumbents thereof, retroactive to March 26, 1936;

(2) Claim of R. W. Downey, Ticket-Freight Clerk, East Chicago, Indiana, and other incumbents of that position for the difference between $4.41 per day and $4.71 per day from March 26, 1936 to April 30, 1936 on account of rate reduction;

(3) Claim of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, etc., that station porters be classed as station janitors and their names placed on seniority rosters;

[fol. 92] (4) Claim of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, etc., that failure and refusal to issue seniority roster and furnish copy of same is in violation of Clerk's Agreement.

The letter requests the Carrier to file with the Third Division of the National Railroad Adjustment Board within thirty days fifteen copies of its submission.

PETITIONERS' EXHIBIT 3

Petitioners' Exhibit No. 3, letter of General Manager for Trustees dated February 19, 1937, to Secretary of the National Railroad Adjustment Board, Third Division, acknowledging receipt of Petitioners' Exhibit No. 2 and advising that the Carrier is in reorganization under Section 77 of the Bankruptcy Law and that its Trustees have, by authority of the court, instituted legal proceedings to determine the status of the railroad as an interurban and if the court sustains the contention of the Carrier that it is an interurban it is exempt from the Railway Labor Act and that pending such final determination no further statements should be required.

PETITIONERS' EXHIBIT 4

Petitioners' Exhibit No. 4, letter of H. A. Johnson, Secretary of National Railroad Adjustment Board, dated March 9, 1937, acknowledges receipt of letter of Charles H. Jones, General Manager for Trustees, dated February 19, 1937, and states that:

"Under the Amended Railway Labor Act, the Interstate Commerce Commission is empowered to determine whether any line operated by electric power falls within the terms of the Act. It appears that the Commission has *determined* by appropriate *order*, that the Chicago, South Shore and South Bend Railroad falls within the terms of the Act, therefore said Board is empowered to hear the disputes which have been submitted and you are requested to file your submission in accordance with my letter of February 18, 1937."

[fol. 93] PETITIONERS' EXHIBIT 5

Petitioners' Exhibit No. 5, read in evidence, is the petition of the Trustees filed December 27, 1935 and the order of this court authorizing the Trustees to enter their appearance in the proceedings before the Interstate Commerce Commission to determine the status of the Carrier as an interurban railway under the Railway Labor Act.

PETITIONERS' EXHIBIT 6

Petitioners' Exhibit No. 6, read in evidence, is the petition and order of this court entered May 27, 1936, authorizing the Trustees to commence and prosecute the present proceedings.

PETITIONERS' EXHIBITS 7 AND 8

Petitioners' Exhibit No. 7 is the petition filed September 30, 1933 by the Chicago, South Shore and South Bend Railroad under Section 77 of the Bankruptcy Act in the United States District Court in the Northern District of Indiana, South Bend Division, for reorganization, and Petitioners'

Exhibit No. 8 is the order of said court entered September 30, 1933, approving the petition for reorganization as properly filed and continuing the Carrier in possession without the appointment of Trustees.

PETITIONERS' EXHIBIT 9

Petitioners' Exhibit No. 9 is the order of this court entered September 30, 1935, appointing John N. Shannahan and Claude J. Jackson, Trustees of the Property of the Chicago, South Shore and South Bend Railroad.

PETITIONERS' EXHIBIT 10

Petitioners' Exhibit No. 10 is the report and order of the Interstate Commerce Commission entered September 30, 1935, approving the appointment of said Trustees.

PETITIONERS' EXHIBIT 11

Petitioners' Exhibit No. 11 is the bond of the Trustees and order of this court approving the same entered November 1, 1935.

PETITIONERS' EXHIBIT 12

Petitioners' Exhibit No. 12 is the report and order of the Interstate Commerce Commission entered April 16, [fol. 94] 1936 (212 I. C. C. 547) approving a plan for the reorganization of the Chicago, South Shore and South Bend Railroad and a supplemental report and order modifying the decree entered October 20, 1936 (217 I. C. C. 423).

PETITIONERS' EXHIBIT 13

Petitioners' Exhibit No. 13 is the Certificate of the Interstate Commerce Commission made April 17, 1937, showing that the Plan of Reorganization has been duly accepted by the required number of creditors and stockholders.

PETITIONERS' EXHIBIT 14

Petitioners' Exhibit No. 14 is the order of this court entered May 1, 1937 setting the hearing on the confirmation of the Plan of Reorganization for June 18, 1937.

And here the petitioners rested and the foregoing was all the evidence introduced in said suit.

ORDER APPROVING STATEMENT OF EVIDENCE

The foregoing statement of evidence is in all respects hereby approved and settled as a true, complete and properly prepared statement of the evidence adduced on the trial of the above entitled suit to the end that the same may become a part of the record in said suit on appeal.

Dated this 4 day of October, A. D. 1937.

Thos. W. Slick, Judge.

Deposited in the Clerk's Office on the 17th day of September, 1937.

Margaret Long, Clerk, Helen Sweeney, Deputy.

[File endorsement omitted.]

[fol. 95] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 96] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF RECORD TO BE PRINTED PER RULE No. 13 —Filed October 14, 1937

Comes now the Appellants in the above entitled cause and adopt their assignments of error as their statement of the points to be relied upon, and state that the whole of the record, as filed is necessary for a consideration of the cause.

Dated this 12th day of October, 1937.

John C. Lawyer, R. Stanley Anderson, Counsel for Appellants.

[fol. 97] Proof of Service

STATE OF INDIANA,
County of St. Joseph, ss:

John C. Lawyer, being duly sworn, deposes and says that he is one of the attorneys and solicitors for the Appellants in the above entitled cause and that on the 12th day of October, 1937, at the United States Post Office in South Bend, Indiana, he mailed by depositing in the United States mail in said Post Office, postage prepaid, an envelope properly addressed to Leo F. Tierney, Special Assistant to the Attorney General, Department of Justice, Washington, D. C., containing a true copy of the above and foregoing statement of points to be relied upon and designation of the parts of the record to be printed in said above entitled cause.

Deponent further deposes and says that at the time and place last aforesaid, he mailed by depositing in the United States mail, postage prepaid, an envelope properly addressed to Nelson Thomas, Attorney for Interstate Commerce Commission, Washington, D. C., containing a true copy of the above and foregoing statement of points to be relied upon and designation of the parts of the record to be printed in said above entitled cause.

Deponent further deposes and says that at the time and place last aforesaid, he mailed by depositing in the United States mail, postage prepaid, an envelope properly addressed to Luther Swygert, Assistant United States District Attorney, Hammond, Indiana, containing a true copy of the above and foregoing statement of points to be relied upon and designation of the parts of the record to be printed in said above entitled cause.

John C. Lawyer.

Subscribed and sworn to before me this 12th day of October, 1937. C. W. *Meoley*, Notary Public. My commission expires 8/12/38. (Seal.)

[fol. 98] [File endorsement omitted.]

Endorsed on cover: File No. 41,983. N. Indiana, D. C. U. S. Term No. 502. John N. Shannahan and Claude J. Jackson, as Trustees of the Property of Chicago, South Shore and South Bend Railroad, et al., appellants, vs. The United States of America and Interstate Commerce Commission. Filed October 14, 1937. Term No. 502, O. T., 1937.